

**DEBRA S. KEELING**  
Claimant

**PRESTIGE REHAB AND NURSING CENTER**  
Respondent

**AMERICAN HOME ASSURANCE COMPANY**  
Insurance Carrier

- (1) Claimant contends that compensability is at issue in this matter, alleging that the Administrative Law Judge's denial of benefits, for claimant's failure to prove that her current need for surgery was related to the work-related injury, is a jurisdictional issue under K.S.A. 44-534a and K.S.A. 44-551.
- (2) Respondent contends that the Appeals Board does not have jurisdiction in this matter, alleging that this is a nature and extent dispute and not one of the issues specifically listed under K.S.A. 44-534a as appealable from a preliminary hearing decision. Additionally, respondent argues the Administrative Law Judge had the jurisdiction to decide this matter pursuant to K.S.A. 44-551.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board finds this matter should be dismissed as the Appeals Board does not, at this time, have jurisdiction over this dispute.

Claimant suffered accidental injury to her right wrist in February 2000 while working at a Winnebago factory in Iowa. Claimant began experiencing difficulties in her right hand, which she reported to her supervisor, and was referred to an orthopedic surgeon on February 10, 2000. Nerve conduction studies completed at that time indicated claimant had moderate carpal tunnel syndrome present in the right wrist, and surgery was recommended.

Claimant quit her job in Iowa and moved to Wichita, Kansas, to be with family. She did not pursue additional medical treatment at that time. Claimant began working for respondent in April 2000.

On July 25, 2000, while assisting another CNA move a patient, claimant was grabbed by the right wrist and yanked. Claimant felt an immediate sensation of pain in her wrist. This was reported to her supervisor. Claimant took several days off from work to visit her mother in Dodge City, Kansas. She then decided she did not want to return to work for respondent and terminated her employment.

Claimant did seek medical treatment for the right wrist injury.

Claimant was referred to physical medicine and rehabilitation specialist Philip R. Mills, M.D., in Wichita, Kansas, for examination and testing. Dr. Mills, after a series of tests, diagnosed claimant with bilateral carpal tunnel syndrome, which he opined preexisted the July 25, 2000, incident. Dr. Mills went on to state that, while he felt there was a temporary aggravation or exacerbation of her problem on July 25, 2000, when the patient grabbed her right wrist, he did not believe that claimant's ongoing problem was related to her work. In his March 21, 2001, letter to Kendall R. Cunningham, Dr. Mills stated that "[g]iven the fact that the problem has continued to increase over time and given the fact that it is bilateral, it does appear that one cannot, within a reasonable degree of medical probability, relate her findings to the one incident."

At the time of preliminary hearing, respondent acknowledged that claimant had suffered accidental injury arising out of and in the course of her employment on July 25, 2000. Respondent's contention was that the injury on July 25 was temporary and that claimant's need for ongoing treatment for her carpal tunnel syndrome, bilaterally, was related to the injury suffered in Iowa or to other unknown causes, but not related to the July 25, 2000, injury with respondent.

K.S.A. 44-551 limits the right of a party to appeal from a preliminary hearing order to situations where it is alleged that the administrative law judge exceeded his or her jurisdiction in granting or denying the benefits requested. K.S.A. 44-534a makes applicable to both claimant and respondent the specific criteria and procedures required to proceed to preliminary hearing for the purpose of medical treatment and payment of temporary total disability compensation. K.S.A. 44-534a also limits appeals from a preliminary hearing to specific jurisdictional issues which include whether the claimant suffered an accidental injury, whether the injury arose out of and in the course of the claimant's employment, whether notice is given or claim timely made, or whether certain defense apply.

In this instance, there is no dispute about whether claimant suffered accidental injury with respondent. The only issue deals with the nature and extent of that injury and whether claimant's injury with respondent is the causative factor leading to claimant's need for the current carpal tunnel treatment. The issue of nature and extent is not an issue which is appealable to the Appeals Board from a preliminary hearing order. Therefore, the Appeals Board finds claimant's appeal in this matter should be dismissed.

In the alternative, had the Appeals Board concluded that this matter was jurisdictional, the medical report of Dr. Mills, which is uncontradicted in the record, would defeat claimant's claim to medical treatment for this injury. Dr. Mills' opinion supports respondent's position that the July 25, 2000, accident was a temporary aggravation only and claimant's ongoing need for medical treatment stems from the injury in Iowa or from other unknown causes.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the appeal of respondent in this matter should be, and is hereby, dismissed and the Order of Administrative Law Judge Nelsonna Potts Barnes dated March 22, 2001, remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of May 2001.

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BOARD MEMBER

c: Chris A. Clements, Wichita, KS  
Kendall R. Cunningham, Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director